



Federal Communications Commission
Washington, D.C. 20554

October 21, 2005

DA 05-2752

Released: October 21, 2005

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

P.D. Communications, LLC
WVAG(TV)
107 2nd Avenue, S.W.
Moultrie, GA 31768

Re: P.D. Communications, LLC
WVAG(TV), Valdosta, Georgia
Facility ID No. 28155
NAL/Acct. No. 064142005
FRN: 0011032513

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), under authority delegated to the Chief of the Media Bureau by Section 0.283 of the Commission's Rules (Rules), 47 C.F.R. § 0.283, for willful and repeated violations of the Commission's rule requiring each commercial broadcast station to place in its public inspection file Children's Television Programming Reports, records concerning compliance with the children's programming commercial limits, and TV issues/programs lists.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the amount of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Accordingly, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991). The commercial limitations became effective on January 1, 1992. *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

Moreover, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.¹ As set forth in Section 73.3526(e)(11)(iii) of the Rules, each commercial television broadcast station is required to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. Section 73.3526 of the Rules also requires commercial television stations to file the reports with the Commission and to publicize the existence and location of the reports. In addition, pursuant to Section 73.3526(e)(11)(ii) of the Rules, each commercial television broadcast station is required to place in its public inspection file on a quarterly basis, records sufficient to allow substantiation of the licensee's certification in its renewal application, of compliance with the children's television commercial limits. Further, Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Section 73.3526 also requires licensees to place records concerning commercial limits, Forms 398, and TV issues/programs lists for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.²

On December 1, 2004, you filed a license renewal application (FCC Form 303-S) for station WVAG(TV), Valdosta, Georgia (File No. BRCT-20041201BPJ). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WVAG(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 and a September 1, 2005 amendment to station WVAG(TV)'s renewal application, you indicate that records concerning commercial limits, Children's Television Programming Reports, and TV issues/programs lists since June 2003 were missing from the station's public inspection file.³ You report that records concerning commercial limits were recreated to the extent possible and Children's Television Programming Reports have been placed in the public inspection file and "brought up to date" on the Commission's website.

You also state that station WVAG(TV)'s TV issues/programs lists for the period prior to October 2004 could not be recreated. You report that these records were maintained in an incomplete manner prior to October 2004 and attribute these deficiencies to instability and staff turnover. Nonetheless, you maintain that station WVAG(TV) presented public service announcements and

¹ See 47 C.F.R. § 73.3526.

² See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

³ You indicate that Dr. Paul E. Shok acquired control of the licensee of station WVAG(TV) following Commission grant of a transfer of control application on May 29, 2003, and that this transfer transaction was consummated on June 10, 2003 (BTCCT-20030410AAO). Subsequently, you report a short-form assignment application to the licensee was granted and consummated in May 2004 (BALCT-20040423AAU). As a result, you assert, the licensee's certification covers only the period of license since June 10, 2003.

a local program which addressed local topics. You describe programs broadcast by the station during the period prior to October 2004 and claim that records concerning some of these programs, as well as records concerning public service programming since October 2004 have been placed in the station's public inspection file.

Station WVAG(TV)'s failure to place in its public inspection file the required documentation constitutes a willful and repeated violation of Section 73.3526(3)(11)(i)-(iii). While corrective actions may have been taken to prevent future violations, this does not relieve you of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵

The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement) and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ Here, the licensee acknowledges that its Children's Television Programming Reports, records concerning children's programming commercial limits, and TV issues/programs lists were missing from the public file since June 2003. Moreover, the licensee apparently did not discover these deficiencies until it prepared its renewal application. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k).

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.⁷ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁸

The public inspection file rule serves the critical function of making available to the public important information related to station operations. On balance, however, we find that WVAG(TV)'s violation of Section 73.3526 does not constitute a “serious violation” of the Commission's rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WVAG(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.283 and 1.80 of the Rules, P.D. Communications, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violations of Section 73.3526(e)(11)(i)-(iii) of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability, P.D. Communications, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, and P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

⁷ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

⁸ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁹ *See* 47 C.F.R. § 1.1914.

IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to P.D. Communications, LLC at the address listed above, and to its counsel, Brian M. Madden, Esquire, Leventhal Senter & Lerman PLLC, 2000 K Street, NW, Suite 600, Washington, D.C. 20006-1809.

Finally, IT IS ORDERED that, the application (File No. BRCT-20041201BPJ) of P.D. Communications, LLC for renewal of license for station WVAG(TV), Valdosta, Georgia, IS GRANTED.

Sincerely,

Donna C. Gregg
Acting Chief, Media Bureau